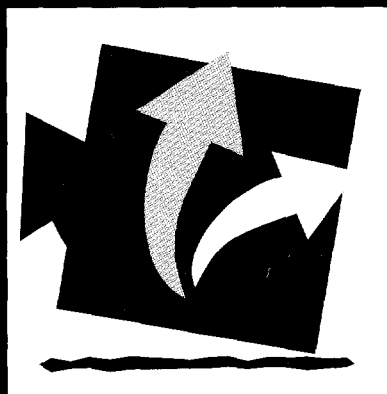


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The Effects of Legislative Change on Female Labour Supply: Marriage and Divorce, Child and Spousal Support, Property Division and Pension Splitting

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January 1999

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THE EFFECTS OF LEGISLATIVE CHANGE ON FEMALE LABOUR SUPPLY

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THE EFFECTS OF LEGISLATIVE CHANGE ON FEMALE LABOUR SUPPLY

INTRODUCTION

Although there has been a considerable amount of legislation aimed at marital rights in several countries in recent decades, the implications for women's labour supply has been a comparatively neglected area. In this report, we use insights from the economics of marriage, including bargaining theories, to examine the labour-market impact of legislation covering marital and post-marital support obligations, which include child support and pension splitting. The focus will be on generic forms of such legislative change with illustrations drawn from recent UK legislative change. The approach is drawn from the economics of law (Posner [1992a]).

Labour supply is mostly interpreted as hours worked. However, the participation rate for women is affected in the framework used if women are moved from 'corner solutions' where they either do not work at all or possibly where they were working but then stop. It is not very useful to distinguish hours worked from the decision whether or not to work at all given the concerns of this paper.

The structure of the paper is as follows. We examine the economic theory of marriage, focusing on individual-bargaining theoretical approaches. To some extent, the resulting behaviour indicated by individual bargaining models of marriage can be easily fitted into standard labour-market modelling of labour supply decisions. We then move on to examine policy towards alimony, child support, property division, and pension splitting. The topics are chosen to reflect important current trends in marital law in developed countries that seem likely to spread towards developing countries.

1. THE ECONOMICS OF MARRIAGE

There is a significant body of economic analysis that regards marriage as the result of rational purposeful behaviour, with the parties seeking gains from trade in much the way that business partnerships operate. These gains are a mixture of financial and other, typically psychic, benefits and costs. It should emphatically not be thought that economic analysis is confined to pecuniary issues.

1.1. *Some Theory*

The literature begins with Samuelson's [1956] rationalization of family behaviour as the result of maximizing a single preference function. Each family member has a set of preferences over the goods that the family can provide or activities in which it can engage. By consensus, they agree to pursue common goals: technically they seek to maximize a consensus social welfare function that applies a set of weights to the preferences of individual members of the family. The point of

this formulation of the family is actually to allow the application of standard consumer theory to household expenditure decisions. Samuelson gave no explanation either of the process of reaching consensus or of how family members came together or moved apart.

Becker [1974; 1991] is considered to be a pioneer among economic theorists of marriage. In fact it would surprise many to learn that Becker's model of the family is imbued with considerable altruistic elements. Marriage is seen as the culmination of a search and matching process, which establishes a household production function allowing efficient division of labour to take place and, in particular, delivering marital public goods like children. Divorce, if legally permitted, results from search in a remarriage market and is therefore a result of inefficient first-partner searching (Becker et al [1977]). Becker's [1991] model of the family is altruistic rather than consensual: a group of selfish rational family members and an altruistic head of family who adjusts intra-familial transfers so that the selfish members work to maximize family welfare.

Carbone & Brinig [1991] have commented that Becker is a traditionalist, who sees marriage in terms of an exchange of domestic services, typically by the female, in exchange for long-term financial support. Marital output comprises marital public goods like children or other shared aspects of lifestyle, as well as private benefits for the parties. There is generally some 'surplus', i.e. a set of net benefits, that must be divided between the parties in a marriage. Also, note that many of the 'investments' (e.g. time spent raising children) are long term in nature and marriage specific (i.e. sunk costs - they cannot be recouped later). Becker's view of marriage would raise major concerns in relation to legal environments that allow easy divorce without tying post-divorce support obligations to findings of substantial breach of contract. In particular, if husbands can abandon wives easily there may be poor incentives for investment (by the wife) in domestic production, which, from a different angle, may encourage labour-market participation by the wife.

Both Samuelson and Becker provide a common-preference view of the family that is useful for integrating the family into the standard economic analysis of consumption. However, the common-preference approach gives a limited starting point for the study of marriage and, in particular, of the impact of legislation covering divorce or marriage. In recent years, economists have increasingly focused on bargaining models of marriage and divorce. These give powerful insights into modern labour-market and marital issues and generate a series of useful testable hypotheses.

To this end it is useful to take a brief look at recent work on intra-household bargaining (Lundberg & Pollak [1996]). The broad conclusion of this game-theoretic work is that the household does not operate as a consensual unit, e.g. alteration of the economic conditions facing one partner, including the rules of divorce, will alter the pattern of expenditure within a family. Thus, a consensual view of the family may be as outmoded as a pre-public-choice, public-interest (rather than interest-group) view of government (Mueller [1989]). Econometric work (Lundberg et al [1995]) on the impact of welfare reforms that increase the share of family income going to the mother shows statistically significant shifts towards mother or child orientated expenditures, which is consistent with a 'separate-spheres' model of marriage and the attitude of aid agencies (World Bank [1995]). Similar work shows a reduction in female labour supply as a response to increases in transfers from males (Fortin and Lacroix [1997] at 953). In such models, the parties

bargain to a cooperative outcome from a non-cooperative threat point based on their own wealth from more independent alternatives, which might include increased labour-market participation or a non-cooperative marriage as possible alternatives to divorce.

An alternative bargaining model uses a divorce threat point as the non-cooperative alternative. An important general prediction from bargaining models is that changes in the initial endowments of parties, through divorce support laws in the divorce-threat model, or in tax and welfare regulations in the separate-spheres model, feed back to alter the allocations of joint income within marriage and the allocation of both parties' time between labour-market and domestic inputs. In examining policy towards marriage and divorce support obligations, it is possible to take a mixed view in which the divorce threat point or a separate-spheres threat point (in a non-cooperative but nonetheless continuing marriage) may be affected with consequences for labour-market participation and expenditure decisions. We may call such models 'individual-bargaining' models of marriage.

We may also interpret (economic-) sociological analysis that notes the extent to which female labour patterns have changed in the twentieth century (Hudson & Lee [1990]) or that observes the variation in responsibilities for decision making across social classes (Pahl [1989]) as implying shifting bargaining boundaries. It would be difficult to support the notion of one model of the marriage contract that remains relatively stationary over time. It is also clear that legislative changes impact upon bargaining threat points and are likely to have significant effects on the desire on the part of women to enter the labour market.

Before moving on to specific policy areas, it is worth outlining Lloyd Cohen's [1987] economic analysis of marriage, which is linked to the modern economic analysis of long-term contracting and problems of opportunistic behaviour. Legislation towards marriage and the family can inadvertently set up incentives for opportunistic behaviour that might deter marriage and enhance labour-market participation by women. Cohen [1987] describes marriage as an unusual contract with the major feature that the parties exchange promises of spousal support, where the value of the support is crucially dependent on the attitude with which they are delivered. In a typical traditional marriage, many of the domestic services provided by the wife occur early in the marriage, whereas the support offered by the male will grow in value over the longer term as his career develops. Over time, the opportunities of the parties may change so that one of them has an incentive to breach the contract. Marriages that end in divorce impose costs on both parties, equal to at least the cost of finding a replacement spouse of equivalent value. Cohen [1987 at 278] argues that the risks and costs of being an unwilling party to divorce are asymmetrically distributed: the husband might be tempted to take the wife's early services and dump her to enjoy his later high income without her (the 'greener-grass' effect), and she will tend to be worth less on the remarriage market than a male of similar age.

Why then do people marry? There are both psychic and instrumental benefits to marriage. The willingness of someone to commit themselves to oneself is evidence of worthiness of such love. On the instrumental side, marriage gives a means of protecting long-term investments in marital assets: according to Cohen [1987 at 269] the spouses may be regarded as 'unique capital inputs in the production of a new capital asset, namely "the family".' In particular, children are highly

valued marital public goods. Another instrumental gain is the provision of insurance: parties give up their freedom to seek new partners if their prospects improve for a similar commitment from a spouse, which is rational if the gains from marriage exceed the cost of losing freedom to separate (see also Posner [1992b]). The gains from marriage reflect surpluses over costs which can be seen as appropriable 'quasi-rents' that may tempt a spouse to opportunistic behaviour, comparable to the incentives in more regular long-term contracts (Klein et al [1978]). Cohen also draws attention to the role of willingness to incur sunk costs like the effort expended on raising children, or the prospect of losing association with one's children, as hostages that may suppress opportunistic exit from the marriage - comparable to the offsetting vulnerability often designed into commercial contracts as hostages (Williamson [1985]).

Cohen [1987] favours the preservation of restraints on opportunistic divorce, which he sees as a question of understanding that marriage is essentially a long-term contractual relationship. The 'wrong' judicial approach to marital obligations like long-term support for breached-against spouses can lead to too much or too little divorce. I note that this observation brings in the idea of an optimal level of divorce, which might be encapsulated in a rule like 'let them divorce when the breaching party (the one who wants to leave, or who has committed a 'marital offence') can compensate the victim of breach.' I pursue the idea of optimal breach further below. Cohen does not believe that any system of obligation (party-designed damages, mutual-consent divorce, indissoluble marriage, or court-determined awards) will perfectly preserve marital surpluses for redistribution. Party-designed damages would be difficult to enforce. Mutual-consent divorce might be thought a perfect solution because to obtain consent a party will have to preserve the other spouse's expected net benefits: but unfortunately the default position of the status quo could not be enforced to give this impetus. Indissoluble marriage would stop efficient divorce (breacher gains more than the victim loses and compensates him or her). The problem with court intervention is less severe, according to Cohen [1987 at 303], as courts could protect the party's expected net benefits (expectation) from marriage - although this is 'much easier to say than to do'. Courts would need to determine who breached and what is the loss to the non-breaching party.

Carbone and Brinig [1991] point out that Cohen reaches essentially traditionalist conclusions from a different perspective (protecting victims of opportunistic breach) than Becker (ensuring inputs are directed to domestic services in family 'production' units). Traditionalist conclusions are not necessarily implied by a contractual focus based on preserving expectation.

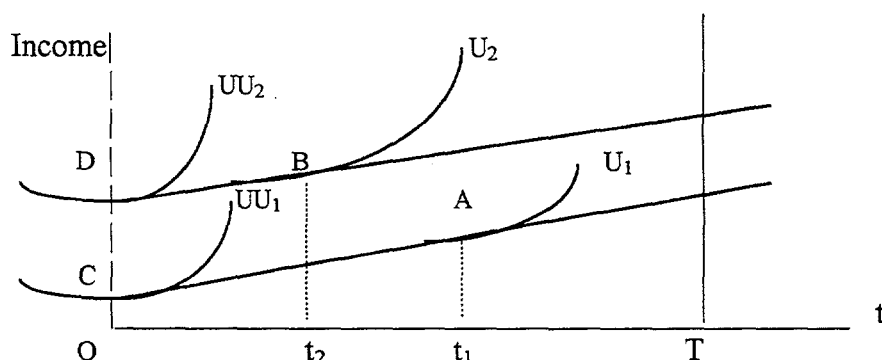
Taking these mostly theoretical observations together, a contractual view of marriage requires the underlying view of contract to be quite sophisticated. Marriage contracts revolve around direct and instrumental benefits, bargaining influences, public goods, long-term and often sunk investments, incentives for due performance and incentives for opportunism. These factors are of considerable consequence. If the law covering the financial obligations attached to divorce fails to suppress opportunism, for example, then fewer marriages will occur than otherwise, or there may be less investment in marriage-specific assets like child raising, because people will not be certain of obtaining acceptable returns on their marriage-specific investments. Thus, we might find considerable erosion of trust between potential spouses and women inclining more towards preserving their worth on the labour market. A general drift away from husbands' life-time

support obligations towards wives, such as has occurred in many developed countries and may be seen as a part of the modernization of developing countries, can be predicted to lead women to insure themselves through greater labour-market participation.

1.2. *Labour Supply*

An implication of individual-bargaining models of marriage is that changes in regulations or laws will shift income from one spouse, or former spouse, to the other. This can be fitted into conventional labour-market analysis as a change in unearned income as shown in Figure 1., which illustrates an individual's labour-supply decision.

Figure 1. Labour Supply



The individual's indifference curves between working time (t) and earnings are shown in Figure 1. The curves (U_1 and U_2) show combinations of working time and wage between which the individual is indifferent, and the convex-from-below shape shows a requirement for the wage rate to increase to bring forth more hours of work. The curve U_2 is everywhere above U_1 showing that higher income for the same work is always a preferred position. The maximum hours that can be worked are shown by the vertical line T . The straight line between point C and point E shows a particular wage rate, with the intercept (C) showing a level of unearned income. Starting at C and given the wage rate, the individual attains the highest indifference curve (level of welfare) at point A by working t_1 hours. If unearned income increases from C to D , the wage line moves up parallel to itself to the position connecting points D and B . In that case the individual reduces hours worked to t_2 .

The prediction to be used throughout this paper is that increases in unearned income will reduce hours of work. This is a reasonable result and rests on the reasonable assumption that labour-supply indifference curves become steeper as they shift upwards. The assumption is supported by the empirical work reporting that women reduce their labour supply following increased income transfers from males (Fortin and Lacroix [1997] at 953)). Many regulatory changes affecting married or divorced couples can be seen in this fashion as transferring income from the male to the female, for whom it has the incentive properties of unearned income.

Note that corner solutions are possible. If the curves become UU_1 and UU_2 , the transfer of CD has no effect on labour-market participation - it is just a windfall. If corner solutions existed at

points like F or G, there might also be no change following a transfer as the individual is could be locked into working all the time (T allows for some sleep!).

This concludes our theoretical review. Broadly, standard labour-supply analysis may be used once it is realized that legislation shifts income between individually motivated marital partners (or ex-spouses). It is also important to recognize possibilities for opportunism based around marital and post-marital obligations.

2. THE MOVE FROM LIFE-TIME SUPPORT OBLIGATIONS

In developed countries, there has been much movement away from laws creating life-time support obligation towards wives, either affecting husbands during marriage or, in particular, after divorce has occurred. There is the possibility that modernization of laws in developing countries might follow the same movement. Eroding the life-time support obligation can be shown to alter the relative attractiveness of domestic work relative to labour market participation for women.

The law in England up to 1984 gives a good example of life-time support obligations. Section 25 of the Matrimonial Causes Act 1973 required courts to '... place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down. 'The operation of Section 25 of the 1973 Act (effectively abolished in favour of a fully discretionary approach in 1984) was influenced by the common-law duty of a husband to financially support his ex-wife, typically at the rate commensurate with providing one-third of joint income, as in *Wachtel v. Wachtel*. That influence may be traced (Carbone and Brinig [1991]) to the origins of marriage as a pre-contract-law, status relationship, with support rates for wives based on the treatment of widows (i.e. dower principles). It seems to have implied that a wife's expectation from a joint lifestyle was less than her husband's. Lord Denning MR said in *Wachtel* 'There was ... much good sense in taking one-third as a starting point. ... there will be two households instead of one. The husband must go out to work ... and must get some woman to look after the house - either a wife ... or a housekeeper ... He will also have to provide maintenance for the children. The wife will usually not have so much expense. She may go out to work ... but she will not usually employ a housekeeper [but] will do most of the housework herself ... She may remarry, in which case her new husband will provide for her. In any case ... the greater expense will, in most cases, fall on the husband.

Some of Lord Denning's comments are consistent with a contractual view of marriage emphasizing expectation damages (remarriage, the benefit spilling over to the child-caring wife from child maintenance) but some are not (she can do her own housework but he cannot). Generally though, the point to note is that the life-time obligation did not significantly incorporate fault into the award of support: unless a former wife's behaviour was regarded as egregiously bad, she would typically obtain alimony. We follow this convention in not relating alimony obligations to fault in the analysis of this paper.

The modern development of divorce law increasingly emphasizes the 'rehabilitation' and independence of abandoned spouses. The Law Commission [1982] came to the conclusion that the 1973 Act's imposition of a duty to place the parties in the position they would have been had

the marriage not broken down was 'not a suitable criterion', based largely on a perceived movement in public opinion against the idea of life-time support. This movement in opinion has probably occurred in many countries by now and much legal reform has incorporated it. The approaches that have typically been introduced are based on broadly three ideas: opportunity cost, rehabilitation and partnership. At this stage we consider alimony-style, periodical payments, examining property division in a later section.

2.1 Opportunity Cost

In his book *The Limits of Freedom of Contract*, Michael Trebilcock [1993] identifies a dilemma in modern divorce laws. The dilemma is that divorce laws that are protective of women in terms of maintenance and capital provisions legitimize the subordinate role of women in society, whereas treating the divorcing couple as equals ignores the disadvantages that specialization in domestic production confers in the outside labour market on many divorcing women. The dilemma is well-rehearsed in Duclos [1987] and Smart [1984].

Duclos [1987] argues that we should approach the valuation of marital assets upon divorce by compensating the abandoned spouse (usually the woman) or the woman choosing to leave the marriage, for the opportunity cost of entering the marriage. The opportunity cost comprises the value of whatever alternative prospects she gave up and may be described as a 'reliance' standard in the terminology of legal scholarship: the opportunity cost has become akin to wasted expenditure and the suggested rule seeks to put her in the position she would have been in had the marriage never taken place (the status quo ante). In this report we focus on the impact of this approach for the abandoned spouse's labour-supply decisions. Duclos particularly draws attention to the loss of career opportunities for many women either on entering marriage or in stopping work to have children. Note however that an economically strong woman leaving a marriage might receive nothing under this approach, if she could be shown to have lost nothing through marriage.

The court would be required to examine and adjust the property rights of the divorcing spouses to put the divorcing woman in the financial position she could claim marriage prevented her from attaining. The suggested operation of this standard is not strictly equivalent to the use of reliance damages, as these might be used in the law of contract (when this occurs) or in tort, because there is no suggestion that the alimony payments should be linked to breach of contract: the adjustment is usually simply to be made for the benefit of an economically weakened divorcing woman. Equally, there is no reason in principle why reliance damages could not be linked to breach of contract, either in the sense of marital offences (substantial breach) or simply as a decision by one party to leave the marriage. The court would transfer income between the ex-spouses to achieve the required adjustment.

Trebilcock [1993, at 45] points out that an immediate problem is that the reliance approach is harsh in its treatment of divorcing women who had poor career prospects before marriage, i.e. the case of the waitress who at nineteen marries a millionaire. Such cases would receive very little compensation for marital breakdown. This realization lies behind Baker's [1988] proposal to award a proportion of the husband's earnings over the duration of the marriage to wives who

specialized early on in domestic production. Trebilcock, following Cohen [1987], correctly criticizes this suggestion for ignoring the time profile of returns in such relationships: the wife typically invests early in domestic production and anticipates that many of the returns will come later in the marriage, as when her husband's freedom to concentrate on his career leads to high late-career earnings and pension entitlements. Nonetheless, reliance does have its supporters among economists of law practitioners, notably in the valuation of the loss of a housewife's services in fatal-accident cases (Knetch [1984]) and, among traditionalists, in establishing an incentive to induce female investment in household production (Becker [1991]; Landes [1978]). The reliance approach was rejected by the Law Commission in England as requiring too much speculation about what might have been but does find its way into case arguments, sometimes in confusion with the restitution standard that we discuss below.

We now examine the incentives for marital investments, which mirrors the incentive for labour-market participation, created by opportunity-cost based standards of post-marital support. Incentives for investments in domestic services would be preserved. A woman contemplating marriage-specific investments in child care by giving up labour-market opportunities, for example, is better off in the marriage with those investments and is at least as well off if it all goes wrong because she receives her opportunity cost (reliance) as compensation. Therefore, the incentive remains for traditional marriages in which the woman exchanges domestic services for long-term support. The reliance approach could therefore easily support a public-policy objective of preserving traditional family life-styles, rather than encouraging women into work, which may not be appreciated by some of its supporters.

It follows that reliance-based systems of post-marital support cannot be used to encourage women into the labour market by their avoiding child rearing during early periods of their lives. The policy is neutral with respect to the incentive to bear children. However, there will be more indirect incentives to enter the labour market alongside child rearing.

The reliance approach provides a longer-term incentive for labour-market participation, beyond the early years of marriage. This is because it does not require the full marital expectations of a divorcing woman to be met upon her divorce. She is in a sense to be short changed if leaving a wealthy marriage, assuming that her opportunity cost was lower than her expected income on entering the marriage. She will therefore have an incentive to enter the labour market to earn money to make up this shortfall following divorce. This incentive is reinforced by divorce laws that make allowance for the fact that the woman can work, as though placing her under a duty to mitigate her losses. In terms of Figure 1, it is as though the operation of the law took away a portion of unearned income, which can be expected to result in an increase in hours worked.

The same 'short changing' will create an incentive for husbands to opportunistically divorce wives, compared with life-time support obligations. This is especially true where there is a sudden move from life-time to more qualified support obligations from husbands to (ex-)wives. The husband may find it attractive to divorce when he would not if faced with life-time obligations, which may be referred to as the 'greener-grass' effect (Dnes [1997] and [1998]). The reduction in trust in marriage likely to follow in such situations may well cause women to participate in labour markets before and during marriage as an insurance policy. Marriage would simply be worth less and

would be a riskier proposition to women, who would, in terms of Figure 1. feel that their expected unearned income had fallen and increase their labour supply to increase personally controlled income during marriage.

2.2. - Restitution

Carbone and Brinig ([1991] at 996) identify a modern development in divorce law that they describe as a restitution approach. In a US context, they argue that academic analysis (Krauskopf [1980] & [1989]; Carbone [1990]; O'Connell [1988]) has been led by developments in the courts, which have increasingly emphasized settlements that repay lost career opportunities, particularly in the context of a wife's domestic support of her husband and children during periods that allowed for the development of business capital, and other contributions to a spouse's career. One can detect restitution elements in English case law, e.g. *Gojkovic v. Gojkovic* (1992), as §25(f) of the Matrimonial and Family Proceedings Act 1984 draws attention to the value of a contribution of domestic services. In the neighbouring jurisdiction, The Family Law (Scotland) Act 1985 is explicit in requiring 'fair account' to be taken of the economic disadvantage suffered by one party in the interests of the welfare of the family.

One example where restitution might be considered appropriate would be when a wife supports her husband through college: if they later divorce, the question is whether it is right that he should keep all the returns on this human-capital investment. The canonical example would be where the wife undertakes the child care so that her husband can develop his professional or business life. Restitution is often cited as an appropriate remedy in contract law when not returning money paid out by the victim of breach would lead to unjust enrichment of the breaching party (Farnsworth [1990 at 946]). Restitution is ideologically acceptable to cultural feminists who wish to emphasize that repayment of sacrifices is owed and that alimony and capital provision should not treat women paternalistically.

A restitution approach is distinct from a reliance approach, although both often emphasize the same life choices, e.g. the opportunity forgone for a separate career. Under a restitution approach, compensation is in the form of a share in the market gain supported by the wife's (or possibly husband's) supportive career choice, e.g. a share in the returns to a medical degree, or a share of the business - where both were the result of the other spouse's adopting primary child-care responsibility. Restitution is therefore only possible where measurable market gains have resulted from the 'sacrifice'. The reliance approach, in contrast, is based on measuring the value of the opportunity forgone, e.g. estimating retrospectively the value of continuing with a career instead of leaving work to raise children.

Restitution is kinder to divorcing women who had poor career prospects before entering the marriage. Indeed, interest in the standard may have been induced by awareness that divorce settlements in the US have tended to disadvantage women and children (Weitzman [1985]). Similar findings have been published in the UK (Eekelaar & Maclean [1986]; Bradshaw & Millar [1991]).

A restitution standard for alimony has many logical similarities to a reliance standard. There will be more divorce compared with lifetime-support obligations and the higher level of opportunistic divorce (the greener-grass effect) will be to the disadvantage of women. The resulting risk in marriage returns to the female will encourage her to work before and during marriage as one possible piece of self insurance. She may need to work after divorce as the restitution standard of alimony will be less generous than life-time support obligations, assuming lifetime support at the married standard of living to be likely to consume some of the husband's 'property rights' in joint marital investments in human and business capital. However, restitution also preserves the incentive for investment in child rearing as the (market) value of opportunities forgone are required to be repaid, so there will be no direct incentives to join the labour market as a result of avoiding child rearing.

Compared with reliance damages, the level of divorce, and the incentive for females to enter the labour market, could be higher or lower under a restitution standard. This is because there is no necessary connection between the value of investment in the other spouse's career and a person's own alternative career prospects. All that is required to attract the person into the marriage is that the net benefit (returns minus investment) be higher than the net returns in the alternative career. For a given alternative career, the requirement is met with high returns to marriage and high investment, or low returns and low investments. Anyway, some of the returns to the person from marriage may be in the form of transfers from the other spouse. Therefore, reliance can be greater or less than restitution.

2.3 Needs-Based Alimony and 'Rehabilitation'

A focus on meeting post-divorce housing and other needs, particularly of the spouse with childcare responsibilities, is the dominant element operating in the current English law on post-divorce financial responsibilities. Need is the starting point, albeit qualified by the social standing of a couple under the rubric 'reasonable needs of the wife', and the majority of cases do not reveal sufficient family resources to go much beyond the housing and basic needs of the divorced wife and the children of the marriage.

The employment consequences of the standard are different from the restitution and reliance standards. If we assume that meeting need is a minimal expectation in marriage, needs-based alimony awards would be less than payments under a life-time support obligation (which would be linked to expectations of marital living standards) or under restitution and reliance standards, and higher levels of divorce would occur. The by now familiar greener-grass effect would be intensified and women would tend to work more in labour markets to make up for lost marital income and to protect themselves from the risk of divorce.

Sometimes a needs-based approach to alimony expressly seeks to support a divorced wife until she can reestablish herself in the labour market. In England, the principle of rehabilitation crops up in the Matrimonial and Family Proceedings Act 1984, which added a requirement to the Matrimonial Causes Act 1973 (§25A[2]) to consider whether alimony payments might be temporary and last just long enough to help a party adjust to the end of financial dependency.

Rehabilitative alimony features in US cases and is an important element of the Scottish system of divorce law.

The needs-based approach will clearly act to direct women into the labour market, but, as a direct incentive, only after divorce. It is simply the case that they will have to work (or possibly draw welfare payments) after the rehabilitative alimony ends, as, in terms of Figure 1., they lose unearned income. However, as in all the case of all the standards considered so far, rehabilitative alimony will be a low-cost obligation compared with life-time support and will encourage some opportunistic husbands to divorce. Women will therefore insure themselves partly by maintaining labour-market participation at earlier stages before and during marriage.

2.4 Child Support Initiatives and Agencies

Several countries have reformed their systems of child welfare by enforcing the payment of child support by absent parents. Such systems are now well established in the USA, Australia, the United Kingdom and across continental Europe. The absent parent is typically the male so that child support obligations have the characteristic of transferring income from males to females, with definite implications for female labour supply as the transfer has the effect of increasing unearned income in terms of Figure 1. To the extent that developing countries lack developed social-welfare systems and become subject to trends towards single parenting, child-support legislation is likely to increasingly arise in such countries.

In the United Kingdom, support of children is now covered by the Child Support Act 1991, under which the Child Support Agency (CSA) uses a formula to deduct support payments from absent parents and transfer the money to the parent with care of the children of the marriage. CSA action to obtain child support payments from absent parents is mandatory when the care-giving parent claims income support, which has come into conflict with the clean-break principle in divorce, under which courts have awarded transfers of property in place of periodical payments as in Smith & McInerney. The Courts appear to be beginning to recognize the danger of double counting payments of capital and income when the CSA imposes a payment order on a pre-1991 case. An implication is that parents with care might receive windfall gains at the start of a CSA-type policy.

Econometric work (Lundberg et al [1995]) on the impact of welfare reforms that increase the share of family income going to the mother shows statistically significant shifts towards mother or child orientated expenditures, which is consistent with a 'separate-spheres' model of marriage and with a reduction in labour-market participation for women. Introducing a CSA-type policy in which absent fathers are required to increase significantly their support of children may be seen as an exact duplicate of the welfare reforms studied by Lundberg et al [1995] - which referred to the introduction of child benefit payments to mothers at the expense of tax benefits to fathers in the UK in the 1970s. A straightforward prediction would be that the incentive to work for mothers with absent partners would be reduced, particularly as the own-wage elasticity of labour supply for women has been shown to increase when intra-household transfers are taken into account (Fortin and Lacroix [1997]).

However, care needs to be taken in drawing policy conclusion from the above theoretical and empirical observations. The Child Support Act in the UK had the effect of greatly increasing payments to mothers, including a part (£48 per week) directly aimed at supporting the mother as principal carer of the child. The £48 exactly matched the amount that would be paid to an 'abandoned' woman claiming Social Security. Thus, if the CSA payment otherwise reflected the costs of caring for children, and the woman received an amount equal to a social-security payment that would consequently disappear, there might be no effect on incentives (as though the wage line shifted up and down by the same amount in Figure 1). In fact, in the UK, this was unlikely to be the case as the amount paid for support of children was very generous compared with either social security rates for children or the amounts that would be awarded for child care by civil courts. Nonetheless, much depends on the design of the CSA-type system: it could be neutral if providing just enough for child care, or if substituting for other payments.

A final important point about CSA-type systems is that they apply to child care not to marriage. Mothers with illegitimate children are perfectly entitled to make claims in the UK, USA and Australia. Such systems are likely to provide income transfers between men and women more generally, as well as between divorced couples.

3. MOVES TOWARDS COMMUNITY-PROPERTY LAWS IN MARRIAGE

Continuing with the analysis of legislative changes affecting marital and post-marital support obligations, rules of property division need to be considered as these affect individual gender-divided levels of wealth. The developed world either follows rules of community property, e.g. a presumption of equal shares in marital property at the point of divorce as in the case of many US states, or of individually owned property that may be reassigned at divorce to meet housing needs or so forth, e.g. in the case of England (but not Scotland). The general move seems to be in the direction of introducing community property backed up by legally enforceable prenuptial agreements (Dnes [1998]).

Dividing the assets of a marriage at divorce is a question of defining property rights or possibly of resolving conflict over property rights. Earlier work in the economics of law has generated several insights into sensible ways to settle conflict over property rights. Such conflicts frequently occur in cases of nuisance, which are usually characterized by ill-defined entitlement to make a particular use of land. The area is a long way from marriage but the principles may be borrowed as it turns out there is little logical difference between conflict over use and conflict over ownership.

According to Calabresi and Melamed (1972) conflict over property rights can be solved by adopting either a 'property' or a 'liability' rule depending on the bargaining costs likely to arise between the parties. Thus, in a simple case of nuisance spilling over between two neighbouring landowners a property rule may be followed because bargaining costs are likely to be low as there are just two parties involved.

Under a property rule, the entitlement to create the nuisance can, as one possible solution, safely be given to the neighbour generating the nuisance. If the 'victim' values freedom from the nuisance more than the 'generating' neighbour values the entitlement to create the nuisance, money will

change hands as the victim will bribe the generator to stop. Thus, the 'entitlement' will end up in the ownership of the hands of the neighbour who values it most highly.

It is equally efficient for the entitlement to be given to the victim, who would then obtain an injunction stopping the nuisance. If the generator of the nuisance is the highest valuing party, money will again change hands and the generator will effectively bribe the victim to condemn the injunction. With low bargaining costs, from the point of view of economic efficiency, it does not matter who has the entitlement (an application of the Coase [1960] theorem) as bargaining will ensure that the entitlement goes to the highest valuing user. Therefore, the courts can avoid costly determination of issues in such cases by issuing or denying an injunction depending on their views of distributing benefits between the parties, secure in the knowledge that bargaining will take care of efficiency. For completeness at this point, note that it would be worth while for courts to follow a liability rule and become involved in valuing nuisance and imposing damages to create a deterrent to the nuisance where bargaining costs are high: typically when damages are diffused across populations.

In the case of ancillary relief, the problem is not nuisance but, rather, one of determining who owns what from the point of divorce onwards. Marriage is clearly a case where bargaining costs are low in that two people are involved who can be expected to communicate, at least in a technical sense. Thus, a property rule, in the sense of Calabresi and Melamed (1972), should be appropriate. It should be possible to choose a simple guideline for property division upon divorce and then rely on marrying couples to form their precise marital expectations based on the existence of that rule. In a sense, it should not matter much what exactly the rule is as the important point is simply to give some focus to bargaining.

One could as easily start from a presumption that divorcees will split marital assets equally as from a different assumption. Presumptions that assets might be split in other proportions would not cause problems. Knowing what the rebuttable presumption is (e.g. take an extreme case like 100 per cent to one party) a couple would negotiate a pre-nuptial agreement to produce the division (e.g. equal shares) they actually wanted. Negotiation would be straightforward: the parties would agree what would happen in the event of divorce at the time they agreed to marry. As long as the presumptive rule were well known in advance of marriage and people were free to negotiate enforceable contracts around it, bargaining should result in optimization for individual cases. Bargaining can yield whatever the parties require regardless of the presumptive rule: it does not much matter whether 10 per cent is agreed to be added to 30 per cent, or 10 per cent is subtracted from 50 per cent, as the result is a 40 per cent share.

There will be no wealth effects, and consequently no labour-market effects, from choosing a particular rule for dividing marital property. The Coase theorem tells us that couples will bargain around the norm and it will anyway be understood from the start of marriage. However, this is not the case if the property-rights system is suddenly changed retroactively, which may well be the case when systems of marital property are reformed. In a developing country, there may suddenly be introduced a system of property rights for married women when this previously did not exist. In such cases, there will be wealth effects as women unexpectedly receive title to property on divorce. Their labour market decisions will be affected as a consequence of such changes, with

propertied divorced women reducing their labour supply compared with cases where they received less property. Wealth effects will tend to work like increases in unearned income in terms of Figure 1.

The above line of reasoning would support the application of new rules to marriages, rather than divorces, from a certain date onwards. Such a forward-looking approach would allow couples to find their optimal asset plan knowing exactly what they must do to achieve this if they do not like the presumptive rule. There would be no sudden windfalls of wealth likely to distort incentive structures. This suggestion is completely undermined if the pre-existing system of property division is totally unacceptable for other reasons (e.g. an absence of any obligation to share tends to leave women destitute).

It is worth noting a few more points about the use of a property rule. First, it could operate after a meeting a maintenance requirement to support children of the marriage, or even to support an ex-spouse with child-care responsibilities, and retain a neutral effect. As long as fundamental obligations and the presumptive rule are well understood, individuals can be expected to negotiate clear agreements if they wish to establish their preferred rule for division. In fact, needs-based support obligations would act as a base-line affecting all possible presumptive or privately negotiated rules. Negotiation could therefore have the character of agreeing asset division (and possibly maintenance payments) over and above certain needs-based support payments (e.g. CSA obligations) that all parties realize will be enforced anyway. Again, the key thing is that such obligations be widely understood.

Secondly, the clarification of marital property rights can be contrasted with the uncertain position that often precedes such legal reform. Wide discretion practiced in the divorce courts can impart considerable uncertainty, which can give tremendous scope for (possibly opportunistic) argument at the point of divorce, when everything is 'up for grabs'. This may render marriage a far less reliable institution and affect women's work preferences, as they may feel a need to insure themselves against uncertain marital benefits.

4. MOVES TOWARDS PENSION SPLITTING

The final area of legislative change towards marriage to be considered in terms of its impact on female labour supply is pension reform. The specific policy to be considered is pension splitting at the point of divorce. Pension splitting rules exist, for example, in the United States of America, the United Kingdom, and in continental European jurisdictions. It is a reasonable judgement that this type of innovation will spread around the world in the near future. One of the benefits of working is the pension rights attached to a job, as these reflect deferred income. Therefore, individual pension entitlements arising in marriage will affect the desirability of work for women, following the kind of individual-bargaining model of marriage that has been used throughout this paper. In terms of Figure 1., transfers of pension rights increase expected unearned income for the recipient.

Recent reforms in England (and Wales) give a useful idea of the nature of pension splitting. Until 1995, settlements over pensions were governed by The Matrimonial Causes Act 1973, as amended by The Matrimonial and Family Proceedings Act 1984. Courts could take pensions into

consideration when transferring assets between former spouses in accordance with the legislative intention of, in particular, meeting needs. Typically, the court, as part of assessing the benefits lost by the divorcing parties, would consider whether it should compensate an abandoned, or abandoning, wife for the loss of her former husband's pension. A wife who had become dependent on her husband would most likely not have taken out a pension in her own name but would anticipate sharing her husband's. In principle, genders could be reversed in cases where a divorcing husband had become dependent on his former wife. On the old law, all private and state pensions could be taken into account if they were a foreseeable benefit, i.e. if they were to become active within a time horizon of four to 10 years. The problem over foreseeability, i.e. its short lead time in the law, reflected judicial incapacity or unwillingness to deal with uncertainty.

In work for the Department of Social Security, Prior and Field [1996] reported that approximately 70 per cent of divorcing couples had private-pension rights that were sufficiently valuable to be contentious. Few of the women interviewed thought that pension rights had been taken into account in their divorce settlements, although this conflicted with the evidence of solicitors, who reported that pensions were taken into account in 70 per cent of cases involving pension rights. One would expect the solicitors to be correct in their perceptions, with it possibly being the case that methods of constructing divorce settlements masked the role of pensions. The figure of 45 per cent reported for divorced women who were satisfied with their settlements (compared with 30 per cent who were dissatisfied) reinforces that conclusion (the natural bias in answering such a question would favour dissatisfaction). Prior and Field report that in the vast majority of cases, the value of the pension was offset against part of the value of the matrimonial home in fashioning a settlement. It could also be the subject of an offsetting lump-sum payment.

The Pensions Act 1995 widened the scope for courts to consider pensions at divorce. The Act removes the reference to 'foreseeable' future income in §25 of the Matrimonial Causes Act, which implies that pensions will be included in more settlements, e.g. where the pension will be paid outside of an horizon of 10 years. Also, former spouses can apply to the court for an attachment order, allowing a share of (typically) the husband's pension to be 'earmarked' for the dependent former wife. If the former spouse remarries or the husband were to die, the earmarking attachment order will cease. The attachment powers in the 1995 Act apply to private, UK based pension schemes. Finally in this matter, pension law is amended in relation to such things as guaranteed minimum payments to allow schemes to cope with the possibility of attachment (henceforth 'earmarking').

The impetus behind the Pensions Act 1995, as far as widening the scope for considering pensions upon divorce is concerned, comes from problems caused by the move away from life-time support obligations in marriage and from cases where there are few non-pension assets. If divorcing husbands (usually) were required to maintain an ex-spouse until one of them died, the issue of earmarking pensions would not arise as maintenance payments would continue into retirement (although, as with earmarking, not beyond the death of the divorced woman). Also, given the practices of courts in offsetting pensions against other assets, there would be no real reason to worry about pensions where there were plenty of other assets. Attachment orders are useful as a means of obtaining a share in the pension, either when it is the only asset in existence or as a means to prolong support.

In turn, attachment orders have come to generate a number of concerns. One is that the former spouse bears risk in that the pension-scheme member (henceforth 'member') may die or may move his pension around in a way that reduces the pension. Because of this the Family Law Act 1996 amends the Matrimonial Causes Act to allow for sharing of the pension asset at divorce, i.e. by reducing the pension rights of the pension-scheme member and creating corresponding new rights for the other party. The Family Law Act was passed by the Conservative Government that left office in 1997. The incoming Labour Government will retain the Act and make operational the section dealing with pension splitting. This is an example of legislation in which a principle was accepted without a practical guide to carrying it out. The incoming Secretary of State for Social Security, Harriet Harman, stated in early 1997 that splitting of pensions at divorce would not be practical before the year 2000. Nonetheless, it is clearly the direction of current legislation, and policy making more generally around the world, and one that has implications for female labour-supply decisions.

The major difference between earmarking pensions and splitting at divorce is in the implications for risk bearing. Under earmarking, the divorced wife of a scheme member must wait until he retires before she can claim a share of the pension. With splitting, she can claim her own pension (she cannot usually have the cash in the present) at her own retirement. It is technically possible to render these two expected values equal by reducing the split amount to take account of its greater certainty (it has no scheme-member related risk attached) but courts would never have the information to do so. Therefore, courts will develop rules of thumb, and, compared with earmarking, splitting is likely to give some divorced wives more than the certainty equivalent of an earmarked amount and give others somewhat less. There will therefore be some distortion of labour market decisions, with some divorced wives wishing to increase labour supply and others reduce it relative to the level associated with earmarked pension shares.

The influence of changes in pensions on labour supply arises owing to the fact that pensions are future income that can be considered as contributing to a lifetime earnings profile for the worker. In this case the earnings are (in decision-making terms) unearned, and increases will tend to reduce the need for earned income whereas decreases will increase the need for earnings.

Even the move to earmarking pensions may have labour-market implications for women. It is tempting to argue that there will be no implications as before divorce, the wife would anyway have enjoyed a share of her husband's pension rights. Such arguments are not sound given that the evidence on individual-bargaining models of marriage suggests it matters who has property rights in income flows and controls expenditure in marriage (Lundberg et al [1995]; Fortin and Lacroix [1997]). Thus, a move to earmarking or to any kind of pension rights for divorced women should act as though it were an increase in unearned income and reduce their labour supply accordingly.

CONCLUSIONS

In this paper we have shown that current trends towards reforming marital law, particularly with respect to post-divorce obligations will alter women's incentives to supply labour. The move from life-time support obligations increases the need of women to work following divorce but also increases their vulnerability to divorce, causing increased labour supply as a self-insurance mechanism. This claim can be made in relation to reliance-based, restitution-based, rehabilitative and needs-driven standards of alimony payments.

Conversely, reform of property division that favours women by introducing property interests where none previously existed would tend to reduce their labour supply owing to wealth effects. The same may be said of pension splitting, where pensions are best viewed as deferred income. On the current income side, child-support obligations imposed on males, if doing more than meeting the bare needs of child rearing, would act as unearned income for, and tend to reduce the labour supply of, female child-carers.

On one level, the analysis above warns of an unintended consequence, in the shape of deterring female labour supply, of marital reforms that are frequently expected to benefit women. It is true that policies to enhance female labour-market participation would need to be extremely wary of some current trends in marital law. However, the non-labour-market aspects of these changes may be more important. It is a matter of judgement whether policy should enhance the marital rights of the current female population or insist on certain incentives for labour-market participation.

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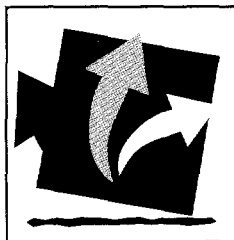
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Summary Findings

Although there has been a considerable amount of legislation aimed at marital rights in several countries in recent decades, the implications for women's labour supply has been a comparatively neglected area. In this report, we use insights from the economics of marriage, including bargaining theories, to examine the labour-market impact of legislation covering marital and post-marital support obligations, which include child support and pension splitting. The focus will be on generic forms of such legislative change with illustrations drawn from recent UK legislative change. The approach is drawn from the economics of law.

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